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New England Telephone and Telegraph)
Company d/b/a Bell Atlantic-Massachusetts)
Fifth Annual Price Cap Compliance Filing) D.T.E. 99-102

HEARING OFFICER RULING ON REQUEST FOR EVIDENTIARY PROCEEDINGS; REVISED PROCEDURAL SCHEDULE

I. BACKGROUND

On January 5, 2000, the Department of Telecommunications and Energy ("Department") held a public hearing and procedural conference in the above-referenced proceeding. At the procedural conference, the Department indicated that there were no matters of factual dispute presented by the parties in their previously-filed comments, and therefore set a schedule for briefing in this matter. At request of the Attorney General, the Department allowed time for parties to submit a request for evidentiary proceedings, in which parties were to identify those issues to be adjudicated, and a proposed schedule for evidentiary proceedings. The Attorney filed such a request on January 21, 2000, and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") responded on January 26, 2000. (1)

II. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General identifies three issues to be addressed in evidentiary proceedings. First, the Attorney General opposes Bell Atlantic's proposal to reduce the productivity factor used in the price cap formula from 4.1 percent to 2.94 percent. The Attorney General states that he is prepared to commence briefing on this issue without further evidentiary proceedings. The Attorney General further states that he is prepared to present evidence to refute Bell Atlantic's characterization of the Attorney General's witness' testimony on the productivity offset in D.P.U. 94-50 (Attorney General Comments at 1).

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Second, the Attorney General alleges that Bell Atlantic's proposal to eliminate the Touch-tone rate for business customers while continuing to charge residential customers for Touch-tone service may be unjustly discriminatory or unduly preferential in contravention of G.L. c. 159, § 14. The Attorney General argues that evidentiary proceedings are necessary to determine whether the proposed rates are unjustly discriminatory or unduly preferential, and whether there is any rational basis for treating these customer classes differently, such as the cost of respective services or by other conditions (i.d.).

Third, the Attorney General contends that evidentiary proceedings are necessary for the Department to determine whether a negative exogenous cost adjustment, and its amount, should be imposed to account for the Department's decision in Complaint of MCI WorldCom, D.T.E. 97-116-C. The Attorney General argues that that decision relieved Bell Atlantic of its obligations to make reciprocal compensation payments (i.d. at 1-2).

B. Bell Atlantic

Bell Atlantic opposes the Attorney General's request. Regarding the Attorney General's arguments on the productivity factor, Bell Atlantic contends that the parties do not dispute the facts. According to Bell Atlantic, this issue requires the presentation of no new factual evidence by the parties and can be sufficiently argued on brief (Bell Atlantic Opposition at 2-3).

Regarding the Attorney General's contention that Bell Atlantic's proposed elimination of Touch-tone charges for business and not residential customers may be unjustly discriminatory, Bell Atlantic argues that it has the right, under the Price Cap rules, to exercise pricing discretion and flexibility in determining what rate changes to make in order to produce the desired overall revenue reductions for the Company's Price Cap compliance filings. Bell Atlantic notes that the Department has upheld Bell Atlantic's pricing discretion in each of its prior Price Cap decisions. According to Bell Atlantic, the Attorney General's position constitutes a departure from the Department's policy, and may potentially result in a "proliferation of claims by parties seeking alternative rate changes regardless of whether [Bell Atlantic's] proposed changes comply with the Department's pricing requirements under the Price Cap Plan" (i.d. at 3). In addition, Bell Atlantic states that the Department found in D.P.U. 94-50 that Bell Atlantic's existing rates were a just and reasonable starting point for the Price Cap Plan. Because the Price Cap Plan is designed so that any rate changes will result in just and reasonable rates, Bell Atlantic contends that compliance with the pricing rules should be considered evidence of the propriety of the proposed rates (i.d. at 3-4, citing D.P.U. 94-50, at 220 n.130, 496-498).

Regarding the Attorney General's proposed negative exogenous cost change, Bell Atlantic argues that the Attorney General fails to meet its burden of proof that its proposed negative exogenous cost adjustment would satisfy the Department's criteria as an exogenous cost change. Bell Atlantic also contends that the Department did not

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relieve Bell Atlantic of its existing reciprocal compensation obligations, but rather quantified the level of reciprocal compensation expense, and that Bell Atlantic continues to pay reciprocal compensation charges (id. at 4-5).

III. ANALYSIS AND FINDINGS

After reviewing the parties arguments, the Hearing Officer finds that the issues presented by the Attorney General do not consist of issues for which the facts are disputed, and those issues may be adequately addressed through briefing. Therefore, the Hearing Officer hereby denies the Attorney General's request for evidentiary proceedings, and establishes a revised briefing schedule below.

The question of whether Bell Atlantic's proposed reduction in the productivity factor is consistent with the Department's Order in D.P.U. 94-50 may be addressed by the parties on brief. To the extent the Attorney General wants to address this question with references to testimony from D.P.U. 94-50, he may do so. The Hearing Officer hereby incorporates by reference the record from D.P.U. 94-50 concerning only the issue of the productivity adjustment, and the parties may use this record to support their briefing positions.

The Attorney General requests that the Department conduct evidentiary proceedings to determine whether Bell Atlantic's Touch-tone rates are unjustly discriminatory. However, in D.P.U. 94-50, at 498, the Department found that Bell Atlantic's then-current rates were reasonable as rates for the starting point under the Price Cap Plan. In addition, the Department found that because the Price Cap Plan is designed so that any rate changes that are in compliance with the pricing rules will result in just and reasonable rates, compliance with the pricing rules will be considered evidence of the propriety of the proposed rate changes. Id. at 220 n.130. The Attorney General does not question whether Bell Atlantic's proposed rates comply with the price cap rules, and, therefore, that factual determination is not in dispute. The question in dispute is whether these rates, which are presumed just and reasonable under the Price Cap Plan, are inappropriate pursuant to other law that controls here. (2) That question may be addressed on brief.

Regarding the Attorney General's request to investigate whether this year's price cap should include a negative exogenous cost adjustment to account for a change in reciprocal compensation obligations, the Hearing Officer notes that the Department's Order in D.T.E. 97-116-C did not relieve Bell Atlantic of an existing obligation to pay reciprocal compensation. Rather, the Order stated that Bell Atlantic did not have an obligation to pay reciprocal compensation for certain types of calls (i.e., calls to internet service providers). Thus, the Attorney General has not stated a claim upon which we could grant relief.

IV. REVISED PROCEDURAL SCHEDULE

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On February 3, 2000, the Hearing Officer suspended the procedural schedule of this matter to accommodate this Hearing Officer Ruling. The procedural schedule is amended as follows:

Initial Briefs: March 6, 2000

Reply Briefs: March 20, 2000

V. RULING

The Attorney General's request for evidentiary proceedings is hereby denied. The procedural schedule for this matter is established as indicated in this Hearing Officer Ruling.

Any aggrieved party seeking to appeal this Ruling pursuant to 220 C.M.R. § 1.06(d)(3) must do so in writing before the close of business on February 18, 2000. Parties must file responses to any appeal before the close of business on February 23, 2000.

February 14, 2000 _____

Date Joan Foster Evans

Hearing Officer

cc: Mary L. Cottrell, Secretary

Paul Afonso, General Counsel

Rebecca Hanson, Assistant General Counsel

Michael Isenberg, Director, Telecommunications Division

Berhane Adhanom, Telecommunications Division

Service List

1. On January 23, 2000, New England Public Communications Council, Inc. ("NEPCC") propounded discovery on Bell Atlantic, and on January 31, 2000, NEPCC filed Comments in Support of Discovery Request (which consisted of a request for evidentiary proceedings). On February 4, 2000, NEPCC withdrew its request for evidentiary proceedings.

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2. The Hearing Officer notes that there are instances in Bell Atlantic's rates where residential services are priced more favorably than business service. See M.D.T.E. No. 10 at Part M, Section 1, page 14 (concerning basic exchange rates).